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October 30, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, DC 20554

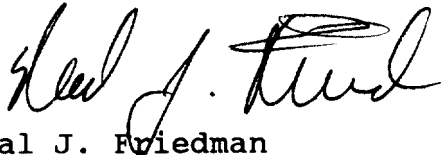
Re: MM Docket No. 97-182

Dear Mr. Caton:

Transmitted herewith on behalf of the South Carolina Broadcasters Association are an original and four (4) copies of its Comments in the above-referenced proceeding.

Should you or the staff have any questions, kindly contact the undersigned.

Sincerely,



Neal J. Friedman

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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OCT 30 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Preemption of State and Local Zoning and)
Land Use Restrictions on the Siting,)
Placement and Construction of Broadcast)
Station Transmission Facilities)

MM Docket No. 97-182

TO: The Commission

COMMENTS OF SOUTH CAROLINA BROADCASTERS ASSOCIATION

1. The South Carolina Broadcasters Association ("SCBA")¹, by its attorney, hereby submits its comments in response to the Notice of Proposed Rule Making ("NPRM"), FCC 97-296, released August 19, 1997, in the above-captioned proceeding.

2. SCBA supports the proposed rule submitted by the National Association of Broadcasters ("NAB"). The Commission notes at ¶12 of the NPRM that it is "well settled" that it has authority under the Communications Act of 1934, as amended, and case law to preempt state and local laws in order to further the objectives of Congress or to carry out its delegated authority. Congress has mandated a speedy recovery of spectrum presently used for over-the-air broadcast television.² The Commission has adopted an accelerated schedule for the deployment of DTV.³ The NAB proposal presents a fair and workable plan for the rapid deployment of digital television ("DTV") service while, at the

¹ The SCBA is non-profit corporation organized under the laws of the State of South Carolina in 1948. Its members include commercial radio and television stations.

² 47 U.S.C. 336(c).

³ *Fifth Report and Order* in MM Docket No. 87-268, FCC 97-116 (April 22, 1997), 62 F.R. 26996 (May 16, 1997) ("*Fifth Report and Order*").

same time, affording protection of the legitimate health, safety and environmental concerns of local residents. The Commission should adopt the NAB's proposed rule.

3. The *Fifth Report and Order* mandates that affiliates of the four major national networks in the top 10 markets must have digital signals on the air by May 1, 1999. Affiliates in markets 11-30 must have a digital signal on the air by November 1, 1999. All other commercial stations must have digital signals on the air by May 1, 2002. Non-commercial stations must have digital signals on the air by May 1, 2003.⁴

4. No stations licensed to South Carolina are located in the top 30 markets.⁵ That notwithstanding, radio and television stations in South Carolina face a formidable task in meeting the Commission's deadline. There are 21 commercial television stations and 11 non-commercial television stations licensed in South Carolina.⁶ An as yet undetermined number of South Carolina television stations will be required to relocate or construct new transmission towers.⁷ Additionally, an undetermined number of FM stations, currently collocated on television towers will be required to relocate or construct new transmission towers due to the fact that windloading factors and other constraints will not permit these stations to remain on existing towers.

5. Obtaining necessary local approvals for construction or modification of transmission towers is never an easy task. Local governments and citizens groups, some

⁴ NPRM at ¶2 citing *Fifth Report and Order* at ¶76.

⁵ The Charlotte, North Carolina market (DMA No. 28) encompasses four counties in South Carolina. Stations licensed to Charlotte serve substantial audiences in South Carolina.

⁶ *Television and Cable Factbook*, 1997 Ed. at p. A-977.

⁷ NAB estimates that as many as 66 percent of existing television broadcasters will require new or upgraded towers to support DTV service. NPRM at ¶3.

with the best of intentions, may delay construction of new towers for months and even years. Such delays, in addition to thwarting the announced goals of Congress and the Commission for a speedy deployment of DTV, can prove costly for licensees already facing a substantial investment in DTV transmission and production equipment.

6. NAB's proposed rule would categorically preempt regulations based on:

- the environmental or health effects of radio frequency ("RF") emissions to the extent a broadcast facility has been determined by the Commission to comply with its regulations and policies concerning emissions;
- interference with other telecommunications signals and consumer electronics devices as long as the broadcast antenna facility has been determined by the Commission to comply with its applicable regulations and/or policies concerning interference; and,
- tower marking and lighting requirements provided that the facility has been determined by the Commission or the Federal Aviation Administration to comply with applicable tower lighting, painting and marking regulations or policies.

Existing rules of the Commission and the Federal Aviation Administration would adequately protect the public with regard to health and safety issues posed by new transmission towers. Thus, there is no need for local regulation of these issues and the Commission's preemption authority is warranted as a matter of law and public policy.

7. The NAB proposal would also "preempt all state and local land use, building, and similar laws, rules or regulations that impair the ability of licensed broadcasters to place, construct or modify their transmission facilities unless the promulgating authority can demonstrate that the regulation is reasonable in relation to a clearly defined and expressly stated health or safety objective other than the categorical preemptions" described in the preceding paragraph of these Comments.⁸ Principal among these concerns would likely be environmental issues and the affect of new or modified towers on historical sites and the like. The

⁸ NPRM at ¶8.

application for a construction permit for new broadcast facilities (FCC Form 301) requires submission of an environmental assessment pursuant to Sections §§ 1.1305, *et seq.*, of the Rules of the Commission where applicable. The Commission is required to consult with other expert state and federal agencies where appropriate. Thus, these concerns will be adequately addressed.

8. NAB's proposal also requires local authorities to act on requests for approval of new or modified transmission towers in a timely manner. Failure to act within the required time period would be deemed approval.⁹ The NAB proposal would eliminate the potential for delay at the local level. It sets forth reasonable deadlines for action that would afford participation by the public.

9. SCBA members are, first and foremost, local businesses. They and their employees are residents of the communities in which these new facilities will be located. Many are active in local civic organizations. It would be foolhardy, indeed, for any broadcaster to propose construction of a transmission tower that would have an adverse impact on the community in which it does business and its employees live.

10. As demonstrated above, the NAB proposal would meet the goals of Congress and the Commission in promoting a speedy deployment of DTV. The proposal would also leave in place existing protections for the public. It would remove the possibility that local authorities or groups of individuals could delay unreasonably this historic development in the history of broadcasting.

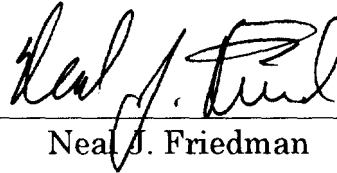
⁹ NPRM at ¶6.

For the forgoing reasons, the South Carolina Broadcasters Association respectfully requests that the Commission adopt the NAB's proposed rule as set forth at Appendix B of the NPRM.

Respectfully Submitted,

**SOUTH CAROLINA
BROADCASTERS ASSOCIATION**

By

A handwritten signature in black ink, appearing to read "Neal J. Friedman", is written over a horizontal line.

Neal J. Friedman

Its Attorney

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October 30, 1997

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